

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Arthur Albano	Team: Squad #4	CCRB Case #: 201506210	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 07/27/2015 4:00 PM	Location of Incident: § 87(2)(b)	Precinct: 42	18 Mo. SOL 1/27/2017	EO SOL 1/27/2017	
Date/Time CV Reported Tue, 07/28/2015 9:29 AM	CV Reported At: CCRB	How CV Reported: E-mail	Date/Time Received at CCRB Tue, 07/28/2015 9:29 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Christophe Davis	00188	938322	042 PCT
2. POM Dennis Vargas	07471	957245	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christophe Davis	Abuse: PO Christopher Davis entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
B.POM Dennis Vargas	Abuse: PO Dennis Vargas entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
C.POM Christophe Davis	Discourtesy: PO Christopher Davis spoke rudely to § 87(2)(b)	§ 87(2)(b)
D.POM Christophe Davis	Force: PO Christopher Davis used physical force against § 87(2)(b)	§ 87(2)(b)
E.POM Dennis Vargas	Force: PO Dennis Vargas used physical force against § 87(2)(b)	§ 87(2)(b)

Case Summary

On July 27, 2015, at approximately 3:30 p.m., § 87(2)(b)'s property management called 911 to report that § 87(2)(b) was causing a disturbance in their office. After realizing that the property management made this call, § 87(2)(b) retreated to his home, which was across the street, at § 87(2)(b), in the Bronx. A few minutes after he got back to his apartment, his friend, § 87(2)(b) who had been present in the property management office during the alleged disturbance, and § 87(2)(b)'s home health aide, § 87(2)(b) also entered § 87(2)(b)'s apartment.

At approximately 4:00 p.m., PO Christopher Davis and PO Dennis Vargas, of the 42nd Precinct arrived at § 87(2)(b)'s home in response to the 911 call. § 87(2)(b) began recording the conversation as soon as he opened the door. Due to this interaction, PO Davis and PO Vargas entered § 87(2)(b)'s apartment without consent (**Allegation A and B**). § 87(2)(b)'s video captured PO Davis calling § 87(2)(b) "§ 87(2)(b) and § 87(2)(b) (**Allegation C**). § 87(2)(b) pushed PO Davis' arm from the door, and PO Davis repeatedly pushed § 87(2)(b) into the residence (**Allegation D**). PO Vargas allegedly pushed § 87(2)(b) making contact with his left arm (**Allegation E**). At the conclusion of the physical struggle, PO Davis and PO Vargas left the residence. No arrests were made or summonses issued.

Video Footage

§ 87(2)(b) provided video footage recorded from his cell phone capturing his interaction with PO Davis and PO Vargas. The video confirms that PO Davis blocked § 87(2)(b)'s door from closing and PO Vargas stepped inside and placed his foot at the base of the doorway while § 87(2)(b) was yelling at them to get out. It also captures PO Davis calling § 87(2)(b) "§ 87(2)(b) and § 87(2)(b) after § 87(2)(b) had called him "§ 87(2)(b) first. The video also shows § 87(2)(b) pushing PO Davis away from his door and then § 87(2)(b) placing his phone face down. While § 87(2)(b)'s phone was down, only audio was captured which corroborates that at least PO Davis entered § 87(2)(b)'s apartment and used physical force against him while yelling, "You do not touch me" and asking, "Do you want to touch me again?" (For transcription see Board Review 1)

Full Video Footage (edited footage available within analysis sections):



Jonathan Cowden Cell- 201506210.mp4

The building video footage of the seventh floor hallway of § 87(2)(b) captures PO Davis and PO Vargas knocking on the door, entering, and exiting the apartment. Since the cameras are motion detected cameras, there are lapses in the video at times when there is no one in the hallway. This video corroborates PO Vargas' and PO Davis' entry into § 87(2)(b)'s apartment.

Full hallway video footage:



§ 87(2)(b) camera 201506210.mp4

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation as an alternative resolution to this complaint.
- As of September 23, 2015, § 87(2)(b) has not filed a notice of claim against the city of New York in regards to this incident.
- § 87(2)(b)

Civilian and Officer CCRB Histories

- § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
- PO Davis has been a member of the service for ten years. This is the first CCRB complaint filed against him.
- PO Vargas has been a member of the service for one year. This is the first CCRB complaint filed against him.

Findings and Recommendations

Allegation A- Abuse of Authority- PO Christopher Davis entered § 87(2)(b) in the Bronx.

Allegation B- Abuse of Authority- PO Dennis Vargas entered § 87(2)(b) in the Bronx.

§ 87(2)(g)

On July 27, 2015, § 87(2)(b) attempted to legally represent his friend, § 87(2)(b) in a tenant dispute with their property management resulting in the management group calling 911 to report harassment. PO Davis and PO Vargas responded to the management group's office and were informed that § 87(2)(b) had returned to his residence located at § 87(2)(b) in the Bronx.

The management group did not file a criminal complaint against § 87(2)(b) and solely requested the officers to inform him that he could not act as a legal representative for § 87(2)(b). PO Davis and PO Vargas further confirmed that they had no intention of arresting § 87(2)(b) when they arrived at his apartment. Upon their arrival, the officers interacted with § 87(2)(b) for approximately 1 minute and 30 seconds when § 87(2)(b) attempted to end their conversation by closing his door and informed the officers that they could not come in to his residence. The closing door was stopped by PO Vargas' foot against the base of the door and PO Davis' hand, which pushed the door fully open again. PO Davis stepped further into § 87(2)(b)'s apartment, resulting in more verbal and physical protests by § 87(2)(b) for the officers to leave his residence. PO Davis responded to some of these comments by saying, "If I don't leave § 87(2)(b) what are you going to do, § 87(2)(b)." PO Davis remained inside the apartment for several more minutes before § 87(2)(b) pushed his arm off the door. PO Davis stated that the reason he held the door open was so he could finish informing § 87(2)(b) that he was not allowed to go into the property management's office to act as a legal representative.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) provided a phone statement to the CCRB consistent up to this point with both the officers and § 87(2)(b) identified an officer consistent with PO Davis' description as pushing § 87(2)(b) through the kitchen, and living room area causing a kitchen cart and other items to fall in the apartment. He confirmed that PO Vargas solely walked in behind his partner. § 87(2)(b) provided a brief phone statement to the CCRB and asked not to be called again. § 87(2)(b) did not differentiate between both officers, but also confirmed that the extent of the entry and the physical force used by solely one officer.

The audio provided by § 87(2)(b) captured crashing sounds, and PO Davis' stressed voice yelling, "You do not touch me," and "Do you want to touch me again?" while § 87(2)(b) yells, "Get," "Get out of my apartment Davis," and "Go" multiple times. The officers acknowledged that PO Davis made physical contact with § 87(2)(b) but indicated that it only took place once,

denied further entry into the residence and could not account for the crashing sounds captured by the audio recording.



Entry 201506210.mp4

Entries into a person's home without a warrant are presumptively unreasonable. The Fourth Amendment has drawn a firm line at the entrance of the house. Absent exigent circumstances, that threshold may not be reasonably crossed without a warrant. Payton v. New York 445 U.S. 573 (1980). When an officer does not have sufficient justification to enter a person's home that officer placing his foot in the doorway of the home is considered not legally present in the home. People v. Reese 5 Misc. 3d 1030(A) (Board Review 3)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation C – Discourtesy- PO Christopher Davis spoke rudely to § 87(2)(b)

The video footage from § 87(2)(b)'s phone captures § 87(2)(b) calling PO Davis "§ 87(2)(b) and moments thereafter, PO Davis states, "If I don't leave § 87(2)(b) what are you going to do, § 87(2)(b) Later in the interaction, PO Davis states to § 87(2)(b) "So would you like to stay here all day? § 87(2)(b) § 87(2)(b)

PO Davis did not have any explanation for calling § 87(2)(b) "§ 87(2)(b) or § 87(2)(b) § 87(2)(b) and stated that he didn't recall having said it, even after being presented the video footage.



Discourtesy 201506210.mp4

NYPD Patrol Guide Procedure 203-09 requires officers to be courteous and respectful when dealing with the public. Police Department v. Teeter held that even when officers are confronted with hostile, defiant, or provocative in manner, officers are still required to maintain a certain decorum and professionalism in their conduct OATH Index No. 590/01. Similarly, Police Department v. Kidert Jean-Mary held that officers are not permitted to use insults solely as retaliation for a civilian's conduct. OATH Index No. 129/07. (Board Review 4)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

Allegation D- Force- PO Christopher Davis used physical force against § 87(2)(b)

Allegation E- Force- PO Dennis Vargas used physical force against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) The audio further captured § 87(2)(b) telling PO Davis that he would not touch him again and that he (PO Davis) hit “like a fucking little girl bitch.” PO Davis responded, “I wasn’t trying to hurt you sir, I really wasn’t.” § 87(2)(b) further alleged that once he was struggling with PO Davis inside of the residence, PO Vargas pushed him once. None of the audio captured a struggle with PO Vargas and § 87(2)(b) solely confirmed that PO Davis made physical contact with § 87(2)(b) (Board Review 5). § 87(2)(b)s statement was quite brief, he did not differentiate between the officers and it is unclear if he observed PO Vargas make any physical contact with § 87(2)(b)

Both officers indicated that PO Davis only pushed § 87(2)(b) once after § 87(2)(b) had pushed him and that this occurred at the threshold of the door. They could not account for the interaction captured in the audio. Both officers denied that PO Vargas made physical contact with § 87(2)(b)



Force 201506210.mp4

NYPD Patrol Guide Procedure 203-11 states that officers are required to use the minimal necessary force. (Board Review 6)

§ 87(2)(b), § 87(2)(g)

Squad: 4

Investigator: _____
Signature Arthur Albano Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date

